

REMARKS

Reconsideration is respectfully requested of the rejection of claims 23-30 as allegedly obvious over Baensch (US Patent 3796812) and Bunch (US Patent 5618574) in view of Kim (US Patent 5773051), and further in view of Ronai (US Patent 4103034), Johnson (US Patent 5936069), Graham (US Patent 3450540), and Kruse (US Patent 2952540) for reasons already of record and for the foregoing.

The present invention is to a method of feeding aquatic animals with individual flaked bodies, **uniform in size and shape**, of feed with a certain water content and thickness.(Our emphasis added). In the final rejection, the Examiner states in part:

It would have been obvious to one of ordinary skill in the art at the time the invention was made to break the sheets into pieces to a diameter taught by Kim and to incorporate the conventional ingredients along with yeast and bacteria, shown to be useful growth promoters.

The shape of the flaked feed is not taught by the prior art but this feature would be considered as a matter of personal choice of the artisan since fish by themselves have no preference to shape and neither can they distinguish such features. Also, Baensch teaches the various shapes of the sheet form at col. 1, lines 65-69 and to break this down into pieces, as taught by the patentee, and to maintain these same shapes would have required no more than ordinary skill. (Our emphasis added).

The Examiner further relies on Bunch as teaching fish feed and Ronai et al. for making flakes with size and water content limitations.

Some of the references describe the manufacture of fish feed by using an extruder and by pressing or densifying the extruded material. It is known that the extruded thread is cut to form smaller pieces of feed by a fast rotating knife. However, none of the prior art cited describes procedures suitable for creating uniform flaked bodies.

The Examiner cites Baensch as showing various shapes of feed particles or foils. However, these are not comparable to the flakes of the present invention. Baensch describes foils or continuous bands that were made by forming a specific foil (Fig. 2) from small feeding particles with an appropriate binder. There is no disclosure of an extrusion process and the following steps required to produce uniform flakes according to the present invention. The Baensch reference cannot manufacture flakes of the same form and size as those of the present invention. Kim teaches the ability to break Baensch's sheets into pieces of a (smaller) diameter and to incorporate the conventional ingredients along with yeast and bacteria, shown to be useful growth promoters. However, the smaller pieces are all of a different form thereby teaching away from the present invention as claimed.

The Examiner has considered the preparation and use of a uniform size and shape of flaked feeds as a matter of personal choice and thus lacking invention since fish are incapable of having preference for their feed and incapable of distinguishing these features. This is an "off the cuff" remark without authority to support the assertion. First of all, fishermen well recognize that fish necessarily can distinguish what attracts them by using various lures, flies, bait, etc. Fishermen will relate to certain lures which attract certain fish, whereas other lures produce better results for other fish. This certainly contradicts the Examiner's theory. More importantly, the fish feed is sold to consumers not fish and thus must appeal to these consumers. Without such appeal, the fish will never get the feed. Thus the consumers dominate the market and may have a strong preference to a patented food product that has uniform shape and size for feeding their aquatic animals.

In reconsideration of the rejection, the Examiner must look at the invention as a whole and appreciate that thickness, water content and uniform size and shape of the flaked bodies are contiguous and form the invention as claimed. None of the references teach or suggest alone or in combination these features together in a flaked body of feed for aquatic animals.

In view of the above, the Examiner's rejection under 35 U.S.C. §103 is unwarranted and should be withdrawn.

The rejection of the claims 23 and 24 on grounds of double patenting over claims in Application No. 11/377890 is acknowledged. On receipt of allowance of the present claims, the '890 application will be expressly abandoned.

It is respectfully submitted that the present claims are in condition for allowance; prompt passage to issue is earnestly solicited.

If the Examiner believes that a discussion would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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